

**CITY OF SAN ANTONIO
CITY MANAGER'S OFFICE
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Christopher J. Brady, Assistant City Manager

SUBJECT: State Legislative Program Update

DATE: May 12, 2005

SUMMARY AND RECOMMENDATIONS

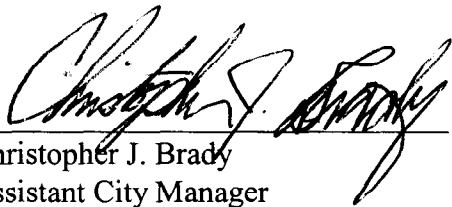
For the remainder of the 79th Legislative Session, staff will be providing updates on the City's approved State Legislative Program every week. Each update will include the status of all initiatives and endorsements included in the City's program.

BACKGROUND INFORMATION


The City's State Legislative Program was adopted by City Council on November 4, 2004, with two addendums approved by Council action on January 6, 2005 and April 7, 2005. The current program consists of 22 legislative priorities grouped into two categories: nine initiatives and 13 endorsements. The last update was presented on May 5, 2005. The Texas Municipal League Legislative Update dated April 22, 2005, which includes an article on land use legislation along with summaries of significant floor and committee actions, is attached to this memo.

COORDINATION

This item has been coordinated with all departments that have items included in the State Legislative Program.



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Assistant City Manager



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Legislative UPDATE

April 22, 2005
Number 16

SOME REPORTS MISS THE MARK ON NEGATIVE LAND USE BILL

Last week's *Legislative Update* reported on **H.B. 2833** by **R. Cook**, a devastating land use bill that was voted out of the House Land and Resource Management Committee on April 7. H.B. 2833 would make cities subject to the Texas Private Real Property Preservation Act (Act), drastically altering the way in which cities exercise their authority to regulate land use. The bill would arguably require a "takings impact assessment" for almost every action a city takes. That requirement is unduly burdensome and runs counter to effective public policy.

The bill excepts certain types of zoning, but most city regulations that might reduce the value of property by more than twenty-five percent would require a takings impact assessment and require a city to compensate an owner for the reduction in value. Such requirements would severely hamper the ability of cities to regulate the use of land for the common good.

Since last week, various organizations have attempted to frame the bill as a rural property rights issue. They claim that cities and other governmental entities are destroying their rural way of life. In fact, several landowners spoke at the committee hearing on the bill about wanting to preserve their "beautiful land in the Texas hill country." The truth is that nothing in current law prohibits them from doing so. By definition, a city does not regulate "rural" land. One commenter in the *San Antonio Express-News* wrote:

"If such regulations are for the betterment of the general public, then the landowner who pays a dear price in loss of value should, under both state and federal constitutions, be compensated fairly."

That blanket statement is not supported by the regulatory takings jurisprudence of either the Texas or United States Supreme Court. The courts apply a much more reasonable definition of a "taking" to cities.

The same commenter also stated that Texans have the right of "owning and enjoying private property." City officials undoubtedly agree with that statement. However, no reasonable person believes that any Texan has the right to develop property in a way that is detrimental to fellow city residents.

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In fact, most land use regulations increase the value of most property in an area by prohibiting a certain use on one parcel. The effect of H.B. 2833 would be to require city residents to subsidize one property owner to the detriment of neighboring property owners. Interestingly, the bill does not provide that if a land use regulation increases a parcel's value, as most do, the owner must compensate the city in any way.

In 1995, the legislature exempted cities from the Act. Why? As opposed to rural residents, city residents have the expectation that their property will be protected for the good of the city as a whole. Because of that expectation, cities regulate private real property in many ways, and a city shouldn't have to incur inordinate costs to enforce those appropriate limits.

As the Texas Supreme Court has stated: "the takings clause...does not charge the government with guaranteeing the profitability of every piece of land subject to its authority. Purchasing and developing real estate carries with it certain financial risks, and it is not the government's duty to underwrite this risk."

Certain groups may try to frame this bill as protection for rural residents. On the contrary, this bill strikes at the very reason cities are incorporated in the first place: *to protect the property values and the health and safety of those living in close proximity to one another.*

Make no mistake, this bill *is* devastating for Texas cities.

DOWN BY THE RIVER IN THE ETJ: FIREWORKS, FIREARMS, AND MUSIC?

Does your city prohibit the sale or possession of fireworks in the extraterritorial jurisdiction (ETJ)? What about the discharge of firearms? Have you extended your noise ordinance to the ETJ to protect the welfare of city residents?

House Bill 2097 by Chisum is a detrimental bill that could curtail nuisance regulations in the ETJ. The bill would provide that a home rule city's authority to abate a nuisance within 5,000 feet of the city limits does not include areas within 50 feet of a public waterway. (A city in a county that borders the Gulf of Mexico or a city within certain counties through which the Guadalupe or Comal rivers flow are exempt from the bill).

In other words, even if a city prohibits the sale or discharge of fireworks within its ETJ, a person would be allowed to engage in those activities within 50 feet of a river or a lake. Why would such a bill be introduced? According to a press report, the bill is meant to address one specific situation, but could harm almost every home rule city in Texas.

The *Austin American-Statesman* recently reported that one city in central Texas extended its noise ordinance to the ETJ. According to the article, H.B. 2097 is designed to help a nightclub located on a lake in that city's ETJ by prohibiting the city from regulating the noise level of live bands near residential areas.

The result of the bill would be to remove important health and safety authority from virtually every home rule city in Texas. The bill passed the House on April 13. City officials should contact their senators to express opposition to H.B. 2097.

CITY-RELATED BILLS FILED

H.B. 3562 (Campbell)—Civil Service: would provide that in a city covered by Chapter 143 of the Local Government Code (fire/police civil service), the number of deputy chiefs appointed by the chief may not exceed the total number of deputy chiefs, plus one, serving on January 1, 2005, as opposed to January 1, 1983, as is current law.

S.B. 1858 (Armbrister) – Water Quality: would: (1) provide that a city's authority to enforce a water pollution control and abatement program shall be limited to ensuring compliance with state pollution and degradation standards only; (2) prohibit cities from regulating water quality or establishing standards or practices for water quality; and (3) automatically transfer areas in a city water pollution control and abatement program to a county water pollution control and abatement program when the program areas overlap.

SIGNIFICANT COMMITTEE ACTIONS

H.B. 116 (Geren), relating to purchasing of development rights. Reported from the House Land and Resource Management Committee. As reported, this bill would place restrictions on the condemnation of land that is part of an "agricultural conservation easement."

H.B. 159 (Talton), prohibiting a city from making an expenditure to educate voters about a ballot proposition within 60 days of the election on that proposition. Reported from the House Urban Affairs Committee.

H.B. 323 (Mowery), relating to annexation. Reported from the House Land and Resource Management Committee. As reported, this bill would prohibit most annexations by requiring that the voters in the area to be annexed must vote to approve the annexation and by imposing additional impractical requirements. (Please see the January 14, 2005, edition of the *TML Legislative Update* for a complete description of this bill.)

H.B. 1081 (Driver), allowing a municipal court judge to suspend the driver's license of a person who fails to appear in court or satisfy a judgment of the court. Reported from the House Law Enforcement Committee.

H.B. 1146 (Chisum), relating to contingent payment clauses in certain construction contracts. Reported from the House Business and Industry Committee.

H.B. 1148 (Rodriguez), making it easier for the elderly and disabled to defer collections of delinquent property taxes. Reported from the House Ways and Means Committee.

H.B. 1167 (Talton), relating to the Texas Department of Housing and Community Affairs (TDHCA). Reported from the House Urban Affairs Committee. As reported, H.B. 1167 contains numerous provisions relating to the operations of TDHCA. Among them are the following: (1) would reallocate funding to certain "underfunded" regions of the state and to "historically

underserved urban areas,” (2) would provide for a “neighborhood” voice in state housing policy by allowing for consideration of at least one board member with experience in a neighborhood organization, and (3) would require “set-asides” for small cities and rural areas.

H.B. 1226 (Puente), requiring a public water utility to develop a water conservation plan. Reported from the House Natural Resources Committee.

H.B. 1345 (Gattis), authorizing police to remove an illegal sign. Reported from the House Law Enforcement Committee.

H.B. 1607 (McCall), relating to e-mail requests for public information. Reported from the House State Affairs Committee.

H.B. 1690 (Keel), relating to common nuisances. Reported from the House Civil Practices Committee. **As reported, this bill provides that a person maintains a common nuisance if the person “knowingly tolerates” certain illegal activities at a place maintained by that person, as opposed to simply knowing about the activity, as is current law.**

H.B. 1692 (Keel), requiring that any person under the age of 25 who is convicted of a moving violation must attend a driving safety course. Reported from the House Criminal Jurisprudence Committee. (Companion bill is **S.B. 1005** by **Carona**.)

H.B. 1835 (Talton), relating to the apportionment of infrastructure costs between a city and a developer. Reported from the House Urban Affairs Committee.

H.B. 2187 (Otto), creating a local-option property tax exemption for certain rent-to-own property. Reported from the House Ways and Means Committee. (Please see **H.J.R. 65**, below.)

H.B. 2236 (Baxter), relating to permit fees. Reported from the House Urban Affairs Committee. **As reported, this bill provides that: (1) a permit fee cannot be higher than a city’s actual costs to process, issue, or enforce the permit; (2) each city must adopt an annual budget and annual audit for each type of permit fee; (3) a city may not increase a permit fee without a public notice, two public hearings, and study that demonstrates an increase is needed; and (4) the state’s attorney general will enforce the bill’s provisions.**

(It is worth noting that the legislature routinely gives blanket authority to state agencies to set state fees with no requirement whatever that fees reflect actual costs.)

H.B. 2305 (Casteel), relating to annexation. Reported from the House Land and Resource Management Committee. **As reported, this bill: (a) applies to an area that is eligible to be the subject of a development agreement (virtually any area) and is appraised as either agricultural or wildlife management land (a tax status that is extremely easy to obtain); and (b) provides that a city may not annex such an area unless the city offers a non-annexation development agreement and the landowner declines to make such an agreement. Thus, this bill would probably stop many annexations.**

H.B. 2755 (McReynolds), relating to development corporations. Reported from the House Economic Development Committee. **As reported, this bill would allow a 4B corporation to engage in a project that is needed for the “development, retention, or expansion of business enterprises” if the corporation has not, for each of the previous two years, received more than \$50,000 in sales tax revenue.**

H.B. 2799 (Talton), relating to removal of vehicles and property from a roadway and to traffic incident management programs. Reported from the House Urban Affairs Committee.

H.B. 2892 (Luna), establishing a meet-and-confer process for firefighters in certain cities that exceed 50,000 in population. Reported from the House Urban Affairs Committee. **As reported, H.B. 2892 differs from its companion (S.B. 1417) in important ways. Both bills (S.B. 1417 and H.B. 2892) are probably intended to match the House-passed version of H.B. 304, which applies to peace officers.**

H.B. 2928 (Kolkhorst), relating to development corporations. Reported from the House Economic Development Committee. **As reported, this bill would apply to a corporation created by a city with a population of 20,000 or less and would broaden the definition of "project" to include activities designed to "promote new or expanded business development."**

H.J.R. 65 (Otto), proposing a constitutional amendment to authorize a local-option property tax exemption for certain rent-to-own property. Reported from the House Ways and Means Committee. (Please see H.B. 2187, above.)

S.B. 142 (Wentworth), authorizing a county to regulate land development in unincorporated areas after a local-option election. Reported from the Senate Intergovernmental Relations Committee.

S.B. 245 (Gallegos), relating to authorizing roadway solicitations for charitable purposes. Reported from the House Urban Affairs Committee.

S.B. 567 (Deuell), requiring that the published notice of a property tax increase hearing must contain certain information comparing the current and future tax year with regard to budgeted expenditures, appraised values, and taxable values. Reported from the Senate Finance Committee.

S.B. 734 (Williams), limiting the authority of a city to regulate the discharge of a firearm in its ETJ or any areas annexed after September 1, 1981. Reported from the House Land and Resource Management Committee. (Companion bill is H.B. 1364 by Mowery.)

S.B. 949 (Armbrister), requiring the Texas Railroad Commission to establish a process for the mediation of certain contested cases. Reported from the Senate Natural Resources Committee.

S.B. 1005 (Carona), requiring that any person under the age of 25 who is convicted of a moving violation must attend a driving safety course. Reported from the Senate Criminal Justice Committee. (Companion bill is H.B. 1692 by Keel.)

S.B. 1318 (Staples), relating to development corporations. Reported from the Senate Business and Commerce Committee. **As reported, this bill would allow certain development corporations to engage in projects that are needed for the "promotion of new or expanded business development."**

S.B. 1473 (Lindsay), requiring training for law enforcement officers regarding persons with mental impairments. Reported from the Senate Criminal Justice Committee.

SIGNIFICANT FLOOR ACTIONS

H.B. 57 (Denny), relating to elections. Passed the House. As passed, H.B. 57 would provide for only two general election dates: (1) the second Saturday in May, and (2) the first Tuesday after the First Monday in November.

H.B. 182 (Mowery), allowing a property taxpayer to protest the appraised or market value of residential real property through binding arbitration rather than through the appraisal review board. Passed the House.

H.B. 1056 (Goodman), authorizing a city to file a dangerous building order in the official deed records of the county. Passed the House. (This is a TML bill.)

H.B. 1126 (Uresti), relating to emergency medical services. Passed the House. On the House floor, H.B. 1126 was amended to provide that in a Chapter 143 city (fire/police civil service), a fire department employee whose primary duties are to provide emergency medical services is considered to be a firefighter entitled to civil service protection.

H.B. 1324 (Pena), providing that burglary of a vehicle is a state jail felony if the perpetrator has been convicted of the same crime on two previous occasions. Passed the House.

H.B. 1347 (Isett), prohibiting photographic traffic enforcement systems. Passed the House.

H.B. 1913 (Olivo), extending the eligibility for adoption of Chapter 143 of the Local Government Code (fire/police civil service) to cities having *either* a paid fire department or paid police department, as opposed to *both*, as current law requires. Passed the House.

H.B. 2097 (Chisum), relating to nuisance abatement. Passed the House. As passed, this bill provides that a home rule city's authority to abate a nuisance within 5,000 feet of the city limits does not include an area within 50 feet of a public waterway, except in certain counties. (Please see a more expansive article elsewhere in this update.)

H.B. 2650 (Krusee), authorizing a city to assist in the financing of a turnpike project. Passed the House.

S.B. 9 (Staples), relating to homeland security. Passed the Senate. As passed, S.B. 9 provides that in the absence of a contract, if a local entity furnishes fire or emergency services to another local entity, each local entity is responsible for its own actions for any civil liability that may arise.

S.B. 286 (Wentworth), relating to open government training. Passed the Senate. As passed, S.B. 286 would provide that:

1. Each elected or appointed member of a governmental body shall complete an open meetings training course of not less than one nor more than two hours.
2. The training must be completed not later than 90 days after the member takes the oath of office or assumes the responsibilities of the office.

3. The attorney general shall ensure the availability of a training videotape at no cost and may approve training by other entities.
4. The entity providing training shall provide a certificate of course completion, and each governmental body shall maintain the certificates of its members.
5. Failure to complete the training does not affect the validity of an action taken by the governmental body.
6. Course completion may not later be used as *prima facie* evidence of a "knowing" violation.
7. Each member of a governmental body and each public information officer must complete an open records training course of not less than one nor more than two hours.
8. With regard to open records training, numbers 2, 3, 4, and 6 (above) each apply.
9. A public official (for example, a member of a municipal government body) may designate a public information coordinator to satisfy the open records training requirement.
10. The bill becomes effective on January 1, 2006, and any person who is required to take a training course and is in office on January 1, 2006, must complete the required training by January 1, 2007.

This bill now differs from its companion bill (H.B. 634 by Baxter) in that S.B. 286 does not require retraining in open meetings and open records every two years. The Senate engaged in a spirited debate on this bill, and it passed only after the Senate assured itself that no individual senator would be required to attend any training courses because: (1) the Senate isn't covered by the open meetings statute, and (2) each senator can send a "public information coordinator" to the public information training.

S.B. 480 (Hinojosa), relating to the authority of cities relative to pipelines. Passed the Senate. As passed, S.B. 480 provides that with regard to a hazardous liquid or carbon dioxide pipeline: (a) a city may assess a reasonable, cost-based charge for use of a public right-of-way; (b) a city may recover reasonable costs of repairing damage to streets by the placement, repair, or maintenance of the pipeline; and (c) the pipeline owner/operator may appeal the right-of-way fee to the Texas Railroad Commission. The bill also provides that with regard to gas pipelines, in addition to the right-of-way fee authorized by Section 182.025 of the Tax Code, the same conditions (items(a), (b), and (c) above) apply.

S.B. 574 (Armbrister), reducing the authority of cities relative to "vested rights" to a permit. Passed the Senate. (Companion bill is H.B. 2748 by Pickett.)

S.B. 848 (Shapiro), reducing the authority of cities relative to "vested rights" to a permit. Passed the Senate. (Companion bill is H.B. 1704 by Kuempel.)

S.B. 1303 (Seliger), relating to peace officer employment records. Passed the Senate. As passed, S.B. 1303 would require a law enforcement agency to: (1) file a written request for employment termination reports from the Texas Commission on Law Enforcement Officer

Standards and Education (TCLEOSE); (2) submit an employment termination report each time a person licensed by TCLEOSE resigns or is terminated from the agency; and (3) correct a person's report in a timely manner upon request by TCLEOSE.

CITY OFFICIALS TESTIFY

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take time to travel to Austin to speak out on important city issues should be applauded by us all.

The following city officials testified recently in front of legislative committees:

Enrique Barrera, Councilmember, San Antonio
Jimmie R. Cooley, Mayor, Woodville
Larry DiCamillo, Assistant Fire Chief, Stafford
Mike Melton, Fire Chief, Stafford
Richard Perez, Councilmember, San Antonio
Leonard Scarcella, Mayor, Stafford
Joey Seeber, Mayor, Tyler
Donald W. Shaw, City Administrator, Woodville
Ed Smith, Mayor, Marshall
Susan Spegar, Special Projects Officer, San Antonio
Leticia Vacek, City Clerk, San Antonio

While TML monitors most hearings, we won't catch the testimony of every city official. If we missed your testimony or the testimony of another official in your city, please contact us at the following e-mail address and we will include your name in the next edition of the *TML Legislative Update*: testify@tml.org.

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